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IN THE

# Supreme Court of the United States

OCTOBER TERM. 1985

CECIL RAY TAYLOR, PRO SE

*Petitioner,*

VS.

UNITED STATES, et al

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Pro Se

## BASIC QUESTIONS

I. Is the taking of the right of occcupancy of a privately owned real property dwelling through the exercise of emminent domain by a sovereign for a factually, as well as undisputed, established period of about 62 days prior to the sovereign's building inspector preparing the report that stated what was wrong with the property and without due process of law and without compensation a violation of the United States Constitution?

II. When a trial judge rules in the first case before him that the proof of a civil conspiracy lacks a denial of a right afforded the appellant by the United States Constitution and an overt act; and then the same trial judge in the second case before him wrongly rules that the second case before him is

barred by res judicata; and the Appeals Court later consolidates both cases as neither one of them is yet final, when the second case includes a right secured by the United States Constitution denied the appellant and an overt act, does the Appeals Court err when it both fails to acknowledge that the proof of the conspiracy by the Trial Judge's criteria is then complete, and continues to quash the federal question by res judicata?

III. Is the United States Constitution the Supreme Law of the Land as written in Article VI of the United States Constitution?

A. (Subquestion) Is the United States Constitution Article 1, Sections 9 & 10, guarantee that "no ex post facto Law shall be passed" superior to the Minimum Housing Code of the City of Independence, Missouri? (Uniform Housing

Code)

B. (Subquestion) Are United States citizens' Constitutional right to be secure in their houses automatically waived the the United States v. Nixon (Watergate) Case?

C. (Subquestion) When 42 or so members of the United States Congress have knowledge of a conspiracy to violate the Constitutional rights of approximately 116,000 United States citizens, and the appellant in particular, is it not wrong for the Congressional Members to not only remain silent but to also fail to initiate any action within their power to bring the conspiracy to a conclusion?

IV. Does a fair trial include the denial of discovery?

A. (Subquestion) When a plaintiff is acting under a clerk's notice to

implement discovery, is it not an abuse of the discretion of the trial judge to quash almost all of the discovery completed under the notice, especially in the face of noncompliance with that notice and Local Rule 15 by the other parties?

B. (Subquestion) If Moore's 4a, 33.02 is the definitive procedure for discovery by interrogatories and Moore states that Rule 33 is as broad in scope as Rule 26 which in general means that parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter (in this case the stipulated proving of the conspiracy) and Rule 26's scope includes witnesses and discovery is unlimited prior to the court order of 9 January 1984; is it not abuse of discretion for a trial court to limit discovery to only

named parties in a conspiracy case and quash discovery made prior to the and on the day of the 9 January 1984 order?

C. (Subquestion) When the trial judge is presented with fact that certain entities have information in support of the plaintiff, is it not an abuse of judicial discretion for the trial judge to both quash discovery and ignore the facts presented relative to the quashed discovery?

V. When the entire defense of a party has been shown to be erroneous, does not an Appeals Court err when it continues the presumption that the defense is valid particularly when a lower trial court has ruled that defense to be without legal merit?

VI. When the defense, particularly a United States Attorney

argues that the President of the United States is involved in an action, does not the Trial Court err when it will not enter the President as a party?

VII. When facts show that certain persons or entities are co-conspirators, should they not be included as parties?

VIII. If all Federal Judges were denied the right to occupy their homes due to such trivia as a broken window and some dry rot; would they in equity continue to rule that there is no deprivation of a right afforded them by the Constitution just because they could no longer use their house as a dwelling?

IX. Does a fair trial mean wrongly barring federal questions by res judicata and then having the Appeals Court continue to prevent pro se appellants from arguing the federal question by the Appeal Court concurring

with the bar by res judicata while the Appeals Court is working on both cases?

## LIST OF PARTIES
## IN EIGHTH CIRCUIT COURT OF APPEALS
## CONSOLIDATED CASE (APPEAL)

United States of America

The Honorable William French Smith

US Attorney General

The US Department of Justice

The Federal Bureau of Investigation

The City of Independence, Missouri

The Mayor and City Council of Independence

Mr. Keith Wilson

City Manager

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Independence, Missouri 6405
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Pro Se

Cecil R. Taylor petitions for a writ of certiorari to review the judgments of the United States Court of Appeals for the Eighth Circuit entered in the above case on September 12, 1985 and October 16, 1985.

## OPIONIONS BELOW

The opinion of the Eighth Circuit Court of Appeals and the two orders of the United States Distict Court for the Western Division of the State of Missouri are unreported.

## JURISDICTION

The judgment of the Court of Appeals was entered on October 16, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254.

## CONSTITUTIONAL PROVISIONS INVOLVED

ARTICLE I, Section 9, provides that:

> "No Bill of Attainder or ex post facto Law shall be passed."

ARTICLE I, Section 10, provides that:

> "No State shall ... pass any Bill of Attainder, ex post facto Law, "

ARTICLE VI provides that:

> "This Constitution, and the Laws of the United States which shall be made Pursuant thereof, ... , shall be the supreme Law of the Land;"

The IV AMENDMENT provides that:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,"

The V AMENDMENT provides that:

> "nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

The XIV AMENDMENT provides that:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## STATEMENT OF THE CONSOLIDATED CASE

On April 6, 1983 Petitioner filed Case No. 83-0376-CV-W-1 in the United States District Court for The Western Division of Missouri. (Jurisdiction 28 USC Sections 1331 and 1361, and 42 USC Section 1983.)

In the undated "Separate Answer Of Defendant City of Independence Missouri to the Petitioner's pleadings in Case No. 83-0376-CV-W-1, the Respondent, City of Independence, Missouri on page 2, paragraph 6, stated that Case No. CV83-

4416 in the Circuit Court of Jackson County, Missouri was a prior pending action.

In the Trial Court Order of July 25, 1983, in Case No. 83-0376-CV-W-1, the Honorable John W. Oliver in Order (2) on page 7 stated:

> "ORDERED (2) that on or before Friday, August 12, 1983, the parties shall confer and prepare, serve and file a stipulation in accordance with the directions in this memorandum"

Those directions, with respect to the Consolidated Case are found on page six of the 25 July 1983 Order, last paragraph of Section III:

> "... and a copy of the complaint filed in the action filed in the Circuit Court of Missouri, Sixteenth Judicial Circuit, styled Cecil Taylor, Pro se v. Larry Mlnarik, et al. Case No. CV83-4416."

On the Eighth day of August 1983, the petitioner provided the Trial Court with copies of both case No. CV83-8453 Civil

J, in the Circuit Court of Jackson County, and Case No. CV83-4416 Civil D in the Circuit Court of Jackson County, Missouri. In the Respondent's Report to the Court filed November 23, 1983; the Trial Judge was provided a second copy of both of the Circuit Court Cases by the Respondents. The Trial Court made no mention nor ordered the consolidation of of Federal Case No. 83-0376-CV-W-1 with either Jackson County Circuit Court case No. CV83-8453 Civil J or Case No. CV83-4416 Civil D, while Federal Case No. 83-0376-CV-W-1 was yet within the jurisdiction of the United States District Court.

On June 27, 1984, Petitioner filed Federal Case No. 84-0695-CV-W-1 in the United States District Court for the Western Division of Missouri. (Jurisdicton 28 USC 1331.) This Case was also placed before the Honorable

John W. Oliver. This case addressed the federal, United States Constitutional, questions not reached by the State Courts in Jackson County Circuit Court Case No. CV83-8453 Civil J.

On August 1, 1984, Federal Case No. 83-0376-CV-W-1 was appealed to the Eighth Circuit Court of Appeals. (Jurisdiction 28 USC Section 1291.)

On August 3, 1984, the Honorable John W. Oliver ruled that Federal Case No. 84-0695-CV-W-1 was barred by res judicata by Federal Case No.83-0376-CV-W-1, and further that petitioner was precluded:

> "from relitigating issues that were or could have been raised in that action. See e.g., Federated Department Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981)."

The trial court stood firm on this position of the petitioner's federal question being barred by res judicata, therefor, on December 27, 1984, the

Petitioner appealed Case No. 84-0695-CV-W-1 to the Eighth Circuit Court of Appeals. (Jurisdiction 28 USC Section 1291.)

On June 26, 1985, The Eight Circuit Court of Appeals granted Respondent's motion to consolidate the appeals for United States District Court Cases No. 83-0376-CV-W-1 and No. 84-0695-CV-W-1, Appeals Numbers 85-1030 and 85-1282. Thus Respondent brought together the federal questions raised in District Court Case 84-0695-CV-W-1 with the Federal Questions raised in District Court Case 83-0376-CV-W-1 just as the Trial Court Judge John W. Oliver had crdered on 3 August 1984. The Eight Circuit Court of Appeals chose not to weigh the merits of the consolidated appeal nor the three Appellant Briefs nor the absence of any Appellee Briefs, and further the Eighth Circuit Court of

Appeals elected not to even mention that the Trial Court erred by wrongly barring the Petitioner's federal questions by the doctrine of res judicata.

Thus, although the Eighth Circuit Court of Appeals has helped the Petitioner by consolidating the cases (appeals), the federal questions addressed in that consolidated case remain unanswered and undisputed new evidence properly provided the appeals Court under Rule 60 of the F.R.C.P. have not been weighed in the case to wit:

1. Overt Acts committed by the Conspirators to complete Case 83-0376-CV-W-1 as ruled by Trial Court Judge John W. Oiver:

(a) From unanswered Appellant Brief in Appeal 85-1030:

(1) Violation of the 4th Amendment of the United States

Constitution.

(2) Depriving Petitioner of his 5th & 14th Amendment and ex post facto Constitutional rights.

(3) Defrauding of the United States.

(4) Unjust enrichment via utility charges for no service.

(b) From unanswered Appellant Brief in Appeal No. 85-1282WM, violation of the freedom of the press or 1st Amendment rights of the Constitution.

2. The Honorable Elmo B. Hunter, United States District Court Trial Judge's, ruling in Case 84-0694-CV-W-3, that the Respondent's defense evidence of the building inspection on 23 June 1981 and inspection

report of 24 August 1981 are without legal merit was not properly acknowledged by the Eighth Circuit Court of Appeals. In fact, the Eighth Circuit Court of Appeals refused to acknowledge the District Court Ruling in Case 84-0694-CV-W-3. This Ruling eliminates 67% of the Respondents' defense. The remaining defense being an erroneous affidavit leaving the Respondents with zero defense.

## ARGUMENT FOR ALLOWANCE OF WRIT

I. The justice rendered thus far in this action will not pass the reasonable person -- common law -- test to wit:

A. A reaonable person living in the United States of America would not anticipate a sovereign taking his real property 62 days before the sovereign had prepared a report as to why it was taking the property, but it is an undisputed fact that that has happened in this situation.

B. A reasonable person would not assume that Section 202 of the Uniform Housing Code would be adjudicated to be superior to the ex post facto provision of the United States Constitution, but both a US District Court and a Court of Appeals have factually done so by wrongly barring the Petitioner's federal

question by res judicata.

C. A reasonable person would expect the police powers of this nation to investigate reported violations of the United States Constitution, but it is a fact in this matter that City, County, State and Federal police powers all individually refused or failed to investigate the Petitioner's complaints.

D. A reasonable person would not believe that a Federal Trial Judge would acknowledge that a building inspector conducted an inspection on a property and went up to the house on that property and posted a notice on the outside of the house, and then the Trial Judge in the same order ruled that the same inspector proved that he did not enter the house when via affidavit the inspector stated he had never been on the premises upon which he

undisputedly conducted the inspection and posted the notice on the house, but that is a fact in these proceedings.

II. The Eighth Circuit Committed Errors Of Law In It's Review Of The Consolidated Case:

The Trial Court Judge, Honorable John W. Oliver, in Section II on page 2 of his Case No. 83-0376-CV-W-1 Memorandum and Order of February 6, 1984, stated that:

> "On or about June 23, 1981, Dale Conard, ..., inspected plaintiff's rental property at 1230 and 1232 (S.) Spring Street, declared the property at 1232 South Spring Street substandard, and posted a notice on that dwelling."

The notice posted by Mr. Conard was not a notice of a future action, but rather it was warning that the building had already been declared substandard and that that declaration was legally binding as the notice read:

> "Warning, Unsafe, Sub-Standard Building According to the Terms of the Minimum Standards Housing Code of The City of Independence. Persons violating this sign are subject to a fine of $500 or 30 days imprisonment or Both. Unlawful to Occupy, Independence Housing Department, 836-8300 ext. 308, posted by Dale E. Conard, Date, June 23, 1981."

It is an undisputed fact that the Minimum Standards Housing Code of the City of Independence in force on or about 23 June 1981 was a slightly modified version of the 1979 Uniform Housing Code.

Further, the Trial Judge stated in Section II, page 2, of his Memorandum and Order in Case No. 83-0376-CV-W-1 of February 6, 1984, that:

> "Conard sent a report to plaintiff on August 24, 1981 (Pl. Exh. #5)."

It is an undisputed fact that Mr. Conard did not have a report to send to the Petitioner prior to August 24, 1981. The period of time which elasped between

23 June 1981, the date of the taking of the Petitioner's rental property, and 24 August 1981, the date Mr. Conard finally sent his report as to "why" the property was taken is about 62 days.

A. The Court Of Appeals Erred When It It Failed To Acknowledge Trial Court's Err In Barring Case No. 84-0695-CV-W-1 by the Doctrine Of Res Judicata Based Upon Case No. 83-0376-CV-W-1.

The Trial Judge's Memorandum Opinion and Orders in Case No. 84-0695-CV-W-1 in Section III, page 2, of August 3, 1984, stated that:

> "A review of the files and records in this Court discloses that plaintiff's complaint is barred by the doctrine of res judicata."

This Trial Judge position was shown to be clearly erroneous when on 26 June 1985 the Appeals Court consolidated the

two active cases. It is a physical fact that an action must be complete before another action can be barred by the doctrine of res judicata by it. The Appeals Court after consolidating the two cases erred when they stated on page 2 in their order of 26 June 1985:

> "However, we have carefully reviewed the original district court files and conclude that the district court correctly denied ... and the motion for reconsideration, equity, and amendment" (In case No. 84-0695-CV-W-1),

Due to the fact that every action in Case No. 84-0695-CV-W-1 was unfairly adjudged due to the trial judge's erroneous bias that the entire matter was barred by res judicata. Thus, the Eighth Circuit Court of Appeals in concurring with the district court's records also treated the 62 day taking of the Petitioner's rental property as though it were a point -- according to

the record -- which was barred by res judicata even though that same Appeals Court had in the same order of 26 June 1985 just consolidated the two cases.

B. The Court of Appeals Erred After Consolidating The Two Cases AS They Failed To Recognize That The Trial Judge's Criteria For Proving The Conspiracy Was Then Met. (See Footnote Number One).

In the Trial Judge's Memorandum and Order, Case No. 83-0376-CV-W-1, dated February 6, 1984, Section III,A., he stated:

> "It is also apparent that plaintiff was not deprived of property without due process of law."

When the Appeals Court consolidated the two cases on 26 June 1985, the consolidated case then included a factual 62 day deprivation of the

FOOTNOTE NUMBER ONE.

SKETCH OF THE
CONSPIRACY

CONSPIRATORS:
City of Independence Officials

Co-CONSPIRATORS SUPPORTING VIA INACTION
Executive Branch
Members of Congress
State of Missouri Officials & John Ashcroft
Jackson County, Missouri Officials
Gas Service Company
Independence Power & Light

AGREEMENTS:
City of Independence, Missouri
a. Nuisance Ordinance
b. Housing Code
Uniform Housing Code Section 202
Absolute Discretion of Executive Branch via United States v. Nixon

INTENT:
Evidenced by length of time this action has been ongoing with no mitigation by the conspirators and co-conspirators.

OVERT ACTS:
Defrauded United States
Constitutional Violations
Taken Real Property
Imposed Ex Post Facto Laws
Substantively enterred real property
Interferred with the News Media
Unjustly enriched themselves for utilities service with no service given.

appellant's real property thus meeting the requirements of 42 USC 1983 for a deprivation of rights. (Baker v. McCollan, 443 US 137, 140 (1979)). There are two or more conspirators. The original written agreement in Case No. 83-0376-CV-W-1 is tied in writing to Mr. Conard's Acts in taking the property by the Minimum Standards Housing Code Section 4.01.005 requirement for the Director of the Department of Health to notify the building inspectors of any structure identified to be a nuisance under the nuisance ordinance. Thus, the agreement in Case No.s 83-0376-CV-W-1 and 84-0695-CV-W-! are factually linked. (Landrigan v. City of Warwick, 628 F.2d 736, 742 (1st Cir. 1980)).

C. The Appeals Court Erred When after Consolidating The Cases and Removing The Trial Judge's "Barred By Res Judicata" The Court Left In Place The Application of The 1979 Housing Code on The Appellant's WW II Vinatage Rental Property.

It is an undisputed fact that the Minimum Housing Code of the City of Independence on or about 23 June 1981 was a version of the 1979 Uniform Housing Code. It is further a fact that the petitioner's rental property at 1232 South Spring is of WW II vintage. 1979 is at least 24 years after 1945, the end of WW II. It is a fact that applying a 1979 Code to a 1945 structure is ex post facto. The point of law being weighed on the public good as in cases where there are life threatening situations -- public safety is an

overriding consideration. The November 23, 1983 Report to the Court filed by the City of Independence, Missouri included a copy of Mr. Marvin Kennedy's Letter dated October 20, 1981 which was sent to the Petitioner. Mr. Kennedy was the Supervisor, Building Inspection for the City of Independence, Missouri. Mr. Kennedy stated in writing:

> "The items Mr. Conard found from the outside inspection will not require any permits, only repair on your part."

What Mr. Conard reported finding in his 24 August 1981 report were a broken window and either a dry rot or termite problem. What Section 1001.(a) General of Chapter 10, Substandard Buildings, Uniform Housing Code 1979 states about declaring buildings "substandard" is:

> "Any building ... in which there exists any of the following listed conditions to an extent that endangers the life, limb, health,

> property, safety or welfare of the public or the occupants thereof shall be deemed and hereby is declared to be a substandard building."

Neither the window or the dry rot problem fit any of the categories necessary to declare this rental property substandard and thus subject it to 1979 criteria and demands to upgrade it against the desires of the Petitioner. This is extremely evident when Dale Conard's Supervisor stated in writing that the situation was so insignificant that it did not even require a building permit. Thus, the Eighth Circuit Court of Appeals erred when on 26 June 1985 they summarily affirmed that Mr. conard's right to declare the appellant's rental property substandard and subject it to 1979 criteria is superior to the United States Constitution's guarantee to no ex

post facto laws.

D. The Court of Appeals Erred When It Summarily Affirmed Case No. 83-0376-V-W-1 wherein the Executive Branch Used An Absolute Defense Based Upon Nixon v. U.S.

On page 703, in 418 U.S. 683, United States v. Nixon, it states:

> "Many decisions of this Court, however, have unequivocally reaffirmed the holding of Marbury v. Madison, 1 Cranch 137 (1803), that "(i)t is emphatically the province and duty of the judicial department to say what the law is.""

On page 704, ibid, it states:

> "Our system of government "requires that federal courts on occasion interpret the Constitution in a manner at variance with the construction given the document by another branch." Powell v. McCormack, supra, at 549. And in Baker v. Carr, 369 U.S., at 211, the Court stated: "Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch

> exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.""

In allegation number 17, Section V, of the original pleadings of Case No. 83-0376-CV-W-1, it was established that the Federal Bureau of Investigation was aware of The Nuisance Ordinance's existence before this fact set came to be as the Petitioner was informed of the Ordinance by FBI Agent Jim Hand while Petitioner was yet in the FBI Office when he filed the complaint. This stay was less than one hour as it was dcne at lunch time. One hour is not adequate time for the FBI to research a City's Ordinances and make a legal determination that that ordinance precluded involvement of the FBI. Therefor, it is fact that the FBI had

knowledge of the conspiracy prior to the Petitioner filing his complaint. Prior knowledge eliminates the United States claim that their refusal to investigate the Petitioner's complaint was discretionary. It is fact that the FBI had already established a policy to do absolutely nothing to stop the conspiracy and rather than exercising discretion were instead continuing to pursue their policy of allowing the conspiracy to go on unchecked in violation of 42 USC 1983 and 1985. (Moriani v. Hunter, D.C.N.Y. 1978, 462 F.Supp 353.)

E. The Court Of Appeals Erred When It Summarily Affirmed The Trial Court's Denial to Amend the Pleadings in Case 84-0695 To Include Members Of Congress.

Although the trial Court denied the use of interrogatories served on about 42 members of Congress it is a fact that each and everyone of those individuals did receive copies of the interrogatories and included with those interrogatories was a complete background statement. Thus it is a fact that on 9 January 1983, about 42 members of Congress were served a comlete descriptive information sheet. As nothing was done by these individuals to stop the conspiracy, and as this Court has the responsibility to intrepret the Constitution to determine whether or not the Legislative Branch's refusal to stop this conspiracy is within or without the authority of the Legislative Branch (Baker v. Carr, ibid) and as new evidence properly provided the Court of Appeals via the Petitioner's Brief in

Appeal No. 85-1030WM, pages 17 - 25, stands as substantive evidence with presumptive adverse inference of fact as the Respondents failed to deny it, that this conspiracy also defrauded the United States Government of about $2,000,000. These Congress persons should be liable for having knowledge of the conspiracy, being in a position to stop it, and not stopping it, as in Williams v. Wright, D.C.Or. 1976, 432 Supp. 732. and Smith v. Hill, D.C. Utah 1981, 510 F. Supp. 767. Nor can they claim good faith with more than one year passed. Harless v. Duck, C.A.Ohio 1980, 619 F.2d 611. And as the defrauding of the United States took place under Section 201 of PL 92-500 which has been delegated to the State of Missouri, this is mixed federal and state programs. Rowe v. State of Tenn.,

C.A. Tenn. 1979, 609 F.2d 259. The specific power of the Congress being the GAO to audit these funds.

F. Both the Trial Court and the Ccurt of Appeals Erred When They Denied Naming State Officials/Individuals As Parties.

John Ashcroft, individually and as a State Official denied to stop the conspiracy -- a verbatim violation of 42 USC 1986 for a state official. See Exhibit p-ex-8 of the original pleadings in case No. 33-0376-CV-W-1 Hampton v. City of Chicago, C.A.Ill, 1973, 484 F.2d 602.

G. Both The Trial Court and Court of Appeals Erred When Discovery was Denied To The Petitioner.

On 21 April 1983 the Trial Court

entered a notice for parties to comply with Local Rule 15, which required the parties represented by counsel to prepare a discovery plan by July 18, 1983. Neither the United States or City of Independence complied with the notice and yet both were granted dismissal while in noncompliance with the Court Notice regarding discovery. The Court did quash 79 of 82 interrogatories which the Petitioner used as part of his discovery. This quashing denied the Petitioner adequate discovery to counter the required initial presumption that public officials were acting in good faith. Most of the interrogatories were served after it was stipulated on September 13, 1983 that the Petitioner would attempt to prove the conspiracy. Thus the Petitioner was looking for coconspirators and witnesses. Moore's

4a, 33.02 clearly states that interrogatories have the same scope as Rule 26 which includes witnesses. Looking for coconspirators is very similar to looking for John Doe defendants in which the Ninth Circuit Court of Appeals has established a precedent as being acceptable. Gillespie v. Civiletti, CA9th, 1980, 629 F.2d 637.

Thus, as the Petitioner was acting under the Court Notice of 21 April 1983 with respect to discovery, and was properly following definitive guidance of Moore's 4a, 33.02 , it was an abuse of judicial discretion for the Trial Court to quash the Petitioner's interrogatories and an abuse by the Appeals Court in not granting the Petitioner's Motion for discovery.

H. Court of Appeals Erred when it Continued to Use Erroneous Evidence Against Petitioner.

Beginning on page 3 of the Memorandum and Crder of February 6, 1984, the trial judge summarized the defenses evidence, Joy rushing 's letter, Conard's affidavit, Conard's inspection on 23 June 1981, and his 24 August Report. Further, the Trial Judge concludes that Mr. Conard never enterred the building based upon Conard's affidavit. First, Joy Rushing was not present at 1232 South Spring on 23 June 1981 so she has no personal knowledge whether or not Mr. Conard actually enterred the building. Her statement is based upon the presumption that Mr. Conard's inspection, inspection report, and affidavit are all of legal merit. On 15 August 1985, the Petitioner served upon

the other parties and mailed to the Court of Appeals a copy of US District Court Judge Elmo B. Hunter's ruling of February 7, 1985 that Mr. Conard's inspection of 23 June 1981 and inspection report of 24 August 1981 were without legal merit. The Respondents did not contradict this evidence and it is therefor conclusive that Mr. Conard's inspection of 23 June 1981 and inspection report of August 24, 1981 are without legal merit and the Appeals Court should have recognized this judicial order by Judge Hunter. (Sherck v. Hagan, D.C.N.D. 1955, 135 F.Supp 293.) under the clearly erroneous standard for evidence (U.S. v. Montgomery, C.A.N.M.1978, 582 F.2d 514.) That leaves only the affidavit of Mr. Conard. It was clearly erroneous for Judge Oliver to conclude that Mr. Conard

never enterred the building on 1232 S. Spring when in his affidavit Mr. Conard did not state that he had not enterred the house. What Mr. Conard said was that he never enterred the "premises" which is totally erroneous as it is an undisputed fact that on 23 June 1981 Mr. Conard not only enterred the premises, but he walked up to the house and placed nctices on two sides of the building. Thus, as there is no fact to prove that Mr. Conard never enterred the building on 1232 South Spring, the initial presumption that Mr. Conard did break into the house at 1232 South Spring stands as substantive evidence that Conard did enter the house, and his false statement made in his defense may be used in determining his guilt. Holt v. U.S., C.A. Cal 1959, 272 F.2d 272. The police power cover up is -- as

argued by the United States -- very similar to Watergate (US v Nixon, ibid) in that City police did not investigate, County Prosecuting Attorney failed to investigate, State refused to "service" the complaint, and the Federal Government refused to investigate however, these are all violations of 42 USC 1983, 1985 and 1986.

On page 5, Section III.B, Trial Ccurt's Memorandum and Order of February 6, 1984, in Case No. 83:0376-CV-W-1, it is stated that:

> "he (the Petitioner) does not have standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations."

It was plain error to not recognize the Petitioner's standing due to real situations as in the original pleadings it has been shown that the FBI had prior knowledge of other breakins without

warrants, not hypothetical, in exhibit p-ex-12, Dorothy Christina knew about two other incidents, not hypothetical, Exhibit p-ex-24, shows that Jackson County Missouri knows that Petitioner has not been singled out, therefor not hypothetical that others are treated likewise.

Exhibit p-ex-23 shows clearly that natural gas was on in 1232 S. Spring on 23 June 1981 and that the house was simply unoccupied -- not vacant as Judge Oliver ruled on Feb 6, 1984. The Ruling cn Feb 6, 1984 was a direct result of the gas service company refusing to answer interrogatories.

I. The Court Of Appeals Erred When It Granted Summary Affirmation Not To Amend Case No. 84-0695-CV-W-1 To Include Parties Identified By the Respondents.

Exhibit p-ex-12 attached to the original pleadings in Case No. 83-0376-CV-W-1 shows that a negative declaration of approval to proceed with this case was obtained from the Head of the Executive Branch, President Ronald Reagan, via Certified mail. On June 6, 1983, Assistant United States Attorney Mark J. Zimmerman reversed this position by providing the Executive Branch's official motion for dismissal factually indicating a change in President Reagan's position from one of permission to proceed to one of opposition to the Petitioner under the provisions of United States v. Nixon. As this case stands, it is fact that President Reagan has personally involved himself in this suit. Otherwise, upon what authority -- whose orders -- are the President's underlings working on and which is

contrary to the President's original posture to allow the Petitioner to proceed? (See Footnote Two For List of Significant Errors.)

## CONCLUSION

1. The Petitioner desires to have the federal question of whether or not a sovereign can take his real property 62 days before that sovereign prepares a report of why it was taken without violating the Constitutional Rights of the Petitioner.

2. Petitioner desires to have the Supreme Court interpret the United States Constitution to determine if Section 202 of the 1979 Uniform Housing Code is superior to the Ex Post Facto Provision of the United States Constitution as factually enforced upon

the Petitioner in this case.

3. Petitioner desires to have the errors noted in this petition corrected.

Respectfully submitted,

Cecil R. Taylor
Pro Se
601 West Alton
Independence, MO 64055
816-461-9110

FOOTNOTE TWO:

## LIST OF SIGNIFICANT ERRORS

1. Trial Court NOTICE OF PRETRIAL PROCEDURES PURSUANT TO LOCAL RULE 15 in Case Number 83-076-CV-1 dated April 21, 1983 and requiring compliance by July 18, 1983 was not adhered to by the appellees and ignored by the Trial Judge.

2. Trial Judge's legal interpetation that Dale Conard's affidavit's erroneous comments that he had never enterred the "premises" proved that Conard had never enterred the house when the Trial Judge had already accepted as fact that Mr/ Conard had enterred the premises when Conard inspected house and posted the notice on the house (Case 83-0376-CV-W-1).

3. Quashing of almost all discovery by the Trial Judge. (Case 83-0376-CV-W-1).

4. In Case 84-0695-CV-W-1, Trial Judge ruled this case barred by res judicata by 83-0376-CV-W-1 as they should have been argued together. Err evidenced by Appeals Court consolidation of the two cases. Error further compounded by Appeals Court's refusal to hear cases in a consolidated mode as opinioned by the Trial Judge.

5. Appeals Court ignored new evidence properly and timely submited to it under provision of Rule 60 FRCP.

United States Court of Appeals
For the Eighth Circuit

| | | |
|---|---|---|
| Cecil R. Taylor, Appellant, | ) | |
| | ) | No. 85-1030 |
| v. | ) | and |
| | ) | No. 85-1282 |
| United States, et al Appellees. | ) | |

O R D E R

Appellant Taylor' Motion for Summary Judgment, Petition for Rehearing and Objections have been considered by the Court and are denied.

October 16, 1985

United States Court of Appeals
For the Eighth Circuit

| | | |
|---|---|---|
| Cecil R. Taylor, Appellant, | ) | |
| | ) | No. 85-1030 |
| v. | ) | and |
| | ) | No. 85-1282 |
| United States, et al Appellees. | ) | |

O R D E R

Appellant's "Motion to Show Jurisdicion or Rule 20 August 1985 Order Void" is denied.

September 12, 1985

United States Court of Appeals
For the Eighth Circuit

| | | |
|---|---|---|
| Cecil R. Taylor, Appellant, | ) | |
| | ) | No. 85-1030 |
| v. | ) | and |
| | ) | No. 85-1282 |
| United States, et al Appellees. | ) | |

Submitted: April 30, 1985

Filed: June 26, 1985

O R D E R

These cases from the Western District of Missouri are on appeal from the district court's orders denying Taylor an extension of time to file a notice of appeal, 83-0376-CV-W-1, and denying Taylor's motion to reconsider, provide equity judgments, and amend the proceedings, 84-695-CV-W-1. We grant the motion to consolidate the appeals. However, we have carefully reviewed the original district court files and conclude that the district court

correctly denied the motion for extension and the motion for reconsideration, equity and amendment.

It is ordered that the judgments of the district court are summarily affirmed. See 8th Cir. R. 12(a).

In The United States District Court
For The Western District
Of Missouri
Western Division

| | | |
|---|---|---|
| Cecil R. Taylor, Plaintiff, | ) | |
| v. | ) | No. 84-0695-CV-W-1 |
| Keith Wilson, et al defendants. | ) | |

O R D E R

This case pends on plaintiff's "Motions to Reconsider, Provide Equity Judgments, and Amend Pleadings to Conform to the Evidence Under Provisions of Rule 15(b)," filed November 28, 1984. Plaintiff's motion seeks reconsideration

of this Court's Orders of August 3, 1984, September 17, 1984, and October 30, 1984. We have considered plaintiff's motion and conclude it should be denied.

Accordingly, it is

ORDERED plaintiff's November 28, 1984 motion should be and is hereby denied.

John W. Oliver

Senior Judge

Kansas City, Missouri

November 29, 1984

In The United States District Court
For The Western District
Of Missouri, Western Division

| | | |
|---|---|---|
| Cecil R. Taylor, Plaintiff, | ) | |
| v. | ) | No. 84-0695-CV-W-1 |
| Keith Wilson, et al defendants. | ) | |

MEMORANDUM OPINION AND ORDERS

I.

This case pends on defendant's motion to dismiss, filed July 23, 1984. Plaintiff filed an "Objection to

Erroneous Motion to Dismiss, Answer to Motion to Dismiss, Motion for Summary Judgement." For reasons stated below, defendant's motion to dismiss will be granted, and plaintiff's motion for summary judgment will be denied.

Motion to Dismiss, Motion for Summary Judgement." For reasons stated below, defendant's motion to dismiss will be granted, and plaintiff's motion for summary judgment will be denied.

II.

In his most recently filed pro se pleading, plantiff alleges that the housing inspector's posting on June 23, 1981 of his rental property located at 1232 South Spring Street, Independence, Missouri as "unlawful to occupy" violated plaintiff's rights arising under the Fifth and Fourteenth Amendments to the Constitution of the

United States. Plaintiff further alleges that defendants' enforcement of the City of Independence housing code, allegedly violated the ex-post facto clause of the United States Constitution "by requiring plaintiff to bring his 34 year old (+) dwelling up to 1979 Building Code Standards." Plantiff seeks "damages in the form of lost rent for the unreasonable and wrongful taking of the plaintiff's real roperty."

Defendants' move to dismiss is based on the grund that plaintiff has failed to allege any ground for jurisdiction in this Court and that none exists. Plaintiff's subsequent response states that this Court has jurisdiction pursuant to the federal question provisions of 28 U.S.C. Section 1331(a). We will treat that statement as an amendment to plaintiff's pro se pleading.

III.

A review of the files and records in this Court discloses that plaintiff's complaint is barred by the doctrine of res judicata. On April 6, 1983 plaintiff filed a nine page pro se pleading in Case No. 83-0376-CV-W-1 which asked this Court, inter alia, "to redress the deprivation of rights under color of las in section 11.126 of the City of Independence, Missouri Nuisance Ordinance by the City of Independence secured to the plaintiff by the Fourth and Fourteenth Amendments to the united States Constitution." Plaintiff sought injunctive and "threat of enforcement" of its nuisance ordinance. On July 25, 1983 this Court granted the federal defendants' motion to dismiss, leaving only the City of Independence, Missouri as a defendant. On February 6, 1984

this Court granted the City's motion for Summary judgment.

The City of Independence, Missouri is the principal defendant in this case. None of the other defendants are alleged to have acted in their individual capacities. Furthermore, the actions of which plaintiff complains in this case were clearly addressed in Case No. 83-0376-CV-W-1: On or abut June 23, 1981, defendants' housing inspector posted plaintiff's rental property located at 1232 South Spring Street as substandard and unlawful to occupy. The inspector subsequently notified plantiff that plaintiff was required to repair all broken glass and termite or wood rot. This Court concluded that assuming arguendo the facts as stated, and further assuming that there had been a deprivation of property under the Fifth

and Foureenth Amendments, plaintiff had been afforded sufficient procedural protections.

Plaintiff now attacks Section 202 of the Uniform Housing Code, 1979 Edition, as enforced by defendants' housing inspector. This attempt at piecemeal litigation is untenable. Plantiff has been afforded a full opportunity to litigate the "federal questions" allegedly presented in this case.

The judgment in Case No. 83-0376-CV-W-1 precludes plaintiff from relitigating issues that were or could have been raised in that action. See e.g.., Federated Department Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981) (emphasis added). We conclude that plaintiff's complaint in this case is barred by the doctrine of res judicata

and that defendant's motion to dismiss should be granted. We need not, therefore, reach defendants' contention that plaintiff's claim is barred by the judgments in State court proceedings which have been attached to the pleadings in this case.

Accordingly, it is

ORDERED (1) that defendant's motion to dismiss should be and is hereby granted. It is further

ORDERED (2) that plantiff's motion for summary judgment shoul be and is hereby denied.

ORDERED (3) that all other motions pending in this case should be and are hereby denied as moot.

John W. Oliver
Senior Judge

Kansas City, Missouri

August 3, 1984

In The United States District Court
For The Western District
Of Missouri
Western Division

| | | |
|---|---|---|
| Cecil R. Taylor,<br>Plaintiff, | ) | |
| v. | ) | No. 83-0376-<br>CV-W-1 |
| United States, et al<br>defendants. | ) | |

MEMORANDUM AND ORDER

I.

This case, instituted by plantiff proceeding pro se, pends on defendant's motion for summary judgment. In an earlier Order entered July 25, 1983, this Court granted the federal defendant's motion to dismiss thus leaving the City of Independence, Missouri as the sole defendant. For reasons stated below, the remaining defendant's motion for summary judgment will be granted.

As stated in our July 25, 1983 Order:

Plantiff's basic allegations are that,

while he was checking out certain rental properties he owns in the City of Independence, plaintiff discovered notices posted by the Independence Housing Department stating that the buildings were unsafe and that it was unlawful to occupy them. Upon further inspection, the plaintiff discovered that a window sash had been pushed back and the doors had been unloced in both structures leaing plaintiff to believe that the buildings had been broken into. Plaintiff believes that the building inspector who inspected the structures entered the buildings without plaintiff's permission and without a warrant.

Based upon those allegations, plaintiff makes the following claims: (1) That Independence officials have

conspire together to enter his dwelling without permission and without a warrant and to deprive him of property without due process of law all in violation of 42 U.S.C. Section 1983 and 1985(3), (footnote omitted) and (2) that Section 11.126 of the Independence Nuisance Code is unconstitutional because it allows building inspectors to enter private dwellings without permission or a search warrant in volation of the Fifth and Fourteenth Amendments, and is vague, overbroad, arbitrary and capricious in violation of the due process clause of the Fourteenth Amendment.

II.

The files and record in this case, which include an affidavit, stipulation, exhibits, and answers to interrogatories, establish that there is no genuine issue as to any material fact

and that, therefore, this case is in proper posture for summary judgment pursuant to Rule 56, Fed. R. Civ. P.

On or about June 23, 1981, Dale Conard, the director of the Department of Health of Independence, inspected plaintiff's rental property at 1230 and 1232 Spring Street, declared the property at 1232 South Spring Street substandard, and posted a notice on that dwelling. At the time of the inspection, plaintiff had no renters and the premises were vacant. Conard sent a report to plaintiff on August 24, 1981 (Pl. Exb. #5). That report stated that plaintiff was required to repair all broken glass and termite or wood rot on the building to bring the outside of the building up to City standards. Also, the report stated the plaintiff's building was subject to an inspection on

the inside to insure that it met minimum housing code conditions.

By a letter attached to the report, Conard informed plaintiff that he was required to commence repairs or demolish within 30 days. Plaintiff was also informed that, if he disagreed with the inspection results, he could appeal the results within 14 days by arranging a hearing before the Housing Advisory and Appeals Board. Plaintiff never requested such a hearing.

In response to a letter sent by plaintiff, Assistant City Counselor Joy Rushing, sent an explanatory letter to plaintiff on September 11, 1981. (Pl. Exh. #4). Rushing stated that the inspection was made from the outside of the house and that at no time during the inspection did City inspectors enter the house. The letter then stated: "(a)s

mentioned in Mr. Conard's letter to you, the City is willing to work with you to bring your house up to standard. All you need to do is call Mr. Conard..."

In an affidavit, Dale Conard states that he performed an inspection of the plaintiff's property but never consucted an inspection inside the premises. His inspecton from the outside revealed broken glass and termite or wood rot and, based on those findings, he declared the premises substandard. He further stated that as a building inspector for the City of Independence, he is familiar with the policies and practices of the Building Inspection Department of the City, that he does not enter buildings for inspection purposes without the permission of the owner or resident or the building and that he did not enter the premises commonly known as

1230 or 1232 South Spring, Independence, Missouri (plaintiff's rental properties) for any inspection.

Plaintiff does not attempt to refute Conard's affidavit. In fact, plaintiff, in exhibits attached to his complaint and in a stipulation signed by him, admits that he cannot prove that a building inspector entered his premises.

We find and conclude that the inspection of plaintiff's rental properties at 1230 and 1232 South Spring, Independence, Missouri, was conducted from outside the buildings and that no building inspector entered the dwellings at any time for the purposes of an inspection without the owner's or resident's permission or a warrant.

III.

A.

"(T)he first inquiry in any Section

1983 suit ... is wether the plaintiff has been deprived of a right 'secured by the Constitution and laws.'" Baker v. McCollan, 443 U.S. 137, 140 (1979).

Plaintiff alleges that City of Independence officials conspired to deprive him of his rights by entering his premises without permission or a warrant and by depriving him of property without due process. "A Civil conspiracy is a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties 'to inflict a wrong against or injury upon another,' and 'an overt act results in damage.'" Rotermund v. United States Steel Corp., 474 F.2d 1139, 1145 (8th Cir. 1973) (Citations omitted). This same definition of civil

conspiracy has been applied to Section 1983 actions. Landrigan v. City of Warwick, 628 F.2d 736, 742 (1st Cir. 1980); Lesser v. Braniff Airways, Inc., 518 F.2d 538, 540 n. 2 (7th Cir. 1975). Thus, while conspiracies may be actionable under Section 1983, it is necessary that there has been, beside an agreement, an actual deprivation of a right secured by the Constitution and laws.

We conclude that plantiff has not been deprived of any such rights. It is undisputed that no inspector ever entered plaintiff's buildings in the course of an inspection, so there was no deprivation under the Fourth and Fourteenth Amendments.

It is also apparent that plantiff was not deprived of property without due process of law. Plantiff's buildings

were not destroyed but were instead declared substandard. The City provided plaintiff with an opportunity to appeal but he did not take advantage of it. Assuming that the facts as stated coul be considered a deprivation of property under the Fifth and Fourteenth Amendments, plaintifff was given sufficient procedural protections. Hagen v. Traill County, 708 F.2d 347 (8th Cir. 1983).

We conclude that plaintiff has not been deprived of any right sufficient to state a claim under Section 1983.

B.

Plaintiff also claims that he has standing to challenge the constitutionality of the Nuisance Ordinance. The Supreme Court has stated that "(a)s a general rule, if there is

no constitutional defect in the application of a statute to a litigant, he does not have standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations." Ulster County Court v. Allen, 442 U.S. 140, 155 (1980); see also Broadrick v. Oklahoma, 413 U.S. 601, 610 (1973). As stated above, we find no violation of plaintiff's Fourth, Fifth or Fourteenth Amendment rights arising out of the application of the ordinance to him (Footnote 3). Thus, plaintiff lacks standing to challenge the constitutionality of City of Independence Nuisance Ordinance Section 11.126.

IV.

Also pending in this case is plaintiff's "Motion to Quash Erroneous Court Order and Provide Corrective

Action". We will treat that as a motion for reconsideration of our orders quashing interrogatories served by plaintiff on persons not party to this action. That motion will be denied.

accordingly, it is

ORDERED (1) that plaintiff(s motion for reconsideration of our orders quashing interrogatories should be and is hereby denied. It is further

ORDERED (2) that defendent's motion for summary judgment should be and is hereby grante. It is further

ORDERED (3) that the Clerk, pursuant to Rule 58 of the Federal Rules of Civil Procedure, set forth on a separate document an appropriate judgment in favor of the defendant City of Independence, Missouri and aganst the plaintiff. It is further

ORDERED (4) in light of the Order

entered in this case July 25, 1983 granting the federal defendent's motion to dismiss, upon entry of final judgment in favor of defendant City of Independence, this case shall be closed.

John W. Oliver
Senior Judge

Kansas City, Missouri
February 6, 1984

Footnotes

1. Plaintiff has not alleged any racial or other "class-based, invidiously discriminatory animus" necessary to support a claim under Section 1985. That section is therefore not applicable and we will consider only the claim under Section 1983. See Griffin v. Breckenridge, 403 U.S. 88, 102 (1971).

2. DIRECTOR OF HEALTH AND CHIEF OF POLICE MAY ENTER PREMISES. The director of Health and the Chief of Police, and any officer, agent, or employee designated by either of them, are hereby authorized to enter and inspect all buildings and parts of buildings and other premises, in the daytime, for the purpose of examining the sanitary condition and for the discovery and abatement of nuisances therein. If on such inspection any nuisance or unsanitary condition be found, the same shall be forthwith reported to the Director of Health, who shall direct and order the owner or occupant of the premises forthwith to remove or abate the same.

3. As stated in our July 25, 1983 Order, there is no doubt that Nuisance Ordinance Section 11.126 may not constitutionally authorize municipal officials to enter a private dwelling without a search warrant or permission of the owner or resident. That matter was settled by the United States Supreme Court in Camara v. Municipal Court, 387 U.S. 523 (1967) and See v. seattle, 387 U.S. 541 (1967).

In The United States District Court
For The Western District
Of Missouri
Western Division

| | | |
|---|---|---|
| Cecil R. Taylor,<br>Plaintiff, | ) | |
| v. | ) | No. 84-0694-<br>CV-W-3 |
| Larry Mlnarik, et al<br>defendants. | ) | |

SUGGESTIONS IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

COMES NOW Plaintiff and makes the following suggestions in support of the Motion For Summary Judgment:

1. ...

4. In order for the plaintiff to show that the document at Exhibit p-ex-4 is false, it is necessary for the plaintiff to produce evidence that the structure at 1230 South Spring is and was another type of structure. The plaintiff claims that this structure was indeed a dwelling and was occupied and used as a

dwelling prior to the issuance of the false document, albeit not continuously. As evidence that this structure was a dwelling the following evidence is provided to this Court:

a. ...

f. The August 24, 1981 report of Mr. Dale Conard in which he found that the property needed only a minimum housing code inspection, repair all broken glass, and repair termite or wood rot to be occupied. ...

Cecil R. Taylor

Served 23 July 1984

In The United States District Court
For The Western District
Of Missouri
Western Division

| | | |
|---|---|---|
| Cecil R. Taylor,<br>Plaintiff, | ) | |
| v. | ) | No. 84-0694-<br>CV-W-3 |
| Larry Mlnarik, et al<br>defendants. | ) | |

O R D E R

The Motion To Reconsider is hereby denied as being totally without merit and is repetitive of earlier motions which were denied as being without merit.

Elmo B. Hunter

Senior Judge

Kansas City, Missouri

February 8, 1985